

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

COMMUNITY CONNECTIONS, INC.
and HELEN C. BERGMAN
Respondents

Case No.: I-00-40926

FINAL ORDER

I. Introduction

On June 21, 2001, the Government served a Notice of Infraction (No. 00-40926) upon Respondents Community Connections, Inc. and Helen C. Bergman alleging numerous violations of the regulations governing mental health community residence facilities. The Government alleged that Respondents violated: 22 DCMR 3804.1 (requiring adequate lighting in each room); 22 DCMR 3804.2 (requiring night lights in hallways, bathrooms and, if requested, in each resident's room); 22 DCMR 3804.3 (requiring each outside entrance to be lighted); 22 DCMR 3807.2(c) (requiring each bedroom to have a reading lamp with at least a 100 watt bulb); 22 DCMR 3815.1 (requiring the interior and exterior of the facility to be maintained in a safe, clean, orderly, attractive and sanitary manner); 22 DCMR 3815.3 (requiring each facility to provide at least one clean towel, bedspread, pillow, blanket and mattress cover in good repair for each resident); 22 DCMR 3815.4 (requiring towels and bed linen to be changed and cleaned as necessary, but at least once a week); 22 DCMR 3814.2 (requiring each facility to consult with a

dietician or nutritionist every six months if any resident is in need of a special or therapeutic diet); 22 DCMR 3819.4 (requiring each facility to maintain accurate personnel records); and 22 DCMR 3836.4, (prescribing the appropriate staff to resident ratios). Accompanying the Notice of Infraction was a Statement of Deficiencies and Plan of Correction (the “Deficiency Statement”) that specified the Government’s factual allegations in detail. The Notice of Infraction alleged that the violations occurred on May 31, 2001 at 4322 Bowen Road, S.E. It sought a total of \$1,250 in fines: \$500 for the violation of § 3836.4; \$100 each for the violations of §§ 3804.1, 3804.2, 3804.3, 3807.2(c), 3814.2, and 3819.4; and \$50 each for the violations of §§ 3815.1, 3815.3 and 3815.4.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code § 6-2715, now codified as D.C. Code § 2-1802.05 (2001 ed.)). Accordingly, on July 20, 2001, this administrative court issued an order finding Respondent in default and assessing the statutory penalty of \$1,250 authorized by D.C. Code § 6-2704(a)(2)(A), now codified as D.C. Code § 2-1801.04(a)(2)(A) (2001 ed.).

On July 20, 2001, after issuance of the default order, the Clerk’s Office received an untimely plea of Admit with Explanation from Respondents, together with a request for suspension or reduction of the fine. On July 31, 2001, Respondents filed a response to the default order and offered an explanation for the Clerk’s receipt of their plea beyond the statutory deadline. On August 9, 2001, the Government replied to Respondents’ explanation of both the violations and the timing of the filing.

II. Summary of the Evidence

Respondents do not contest any of the factual allegations in the Deficiency Statement. They state, however, that they corrected all violations promptly. They assert that the violations were discovered during a license renewal inspection and that the prior practice of the inspectors conducting such inspections at all of their facilities has been to allow them an opportunity to correct violations before imposing fines. Accordingly, they state that “it was not an unreasonable assumption to make that we would again have an opportunity to correct the deficiencies cited.” Respondents also assert that their response, dated July 5, 2001, was delivered on July 6, 2001 at “the lobby level of the Office of Adjudication and Hearings,” an apparent reference to the Infractions Clerk Window of the Bureau of Vital Records, which is authorized to receive filings for this administrative court. Respondents assert that there must have been a delay in the transmission of their filing to the Clerk’s Office.

The Government agrees that Respondents corrected the violations promptly and states that it “does not oppose a substantial reduction in the amount of all the charged fines.” It takes no position on whether there should be a reduction or suspension of the assessed penalty for an untimely filing.

III. Findings of Fact

1. By their plea of Admit with Explanation, Respondents have admitted violating each of the regulations cited in the Notice of Infraction on May 31, 2001.

2. Based upon the unrefuted allegations of the Deficiency Statement, the following conditions existed in Respondents' facility located at 4322 Bowen Road, S.E. on May 31, 2001:
 - Bedrooms, hallways and exterior entrances were not properly lighted.
 - Pillows were worn and stained, and bed linens had not been changed.
 - Carpets, walls and mirrors throughout the facility needed cleaning, certain floor tiles needed repair, and some closets needed cleaning and/or repairs.
 - There had been no dietary consultations regarding residents who had special dietary needs for more than six months.
 - The facility did not have updated records showing that certain of its personnel had the necessary health certifications and/or training;
 - The facility had not been assigning sufficient staff during meal times.
3. Respondents corrected the violations promptly. Based upon prior experience, Respondents believed that they would have an opportunity to correct violations before a fine would be assessed against them.
4. Respondents arranged for timely delivery of their response to the Notice of Infraction to the Infractions Clerk Window of the Bureau of Vital Records, which was authorized to receive it. There was a delay in the transmission of Respondents' filing to the Clerk's Office, but Respondents bear no responsibility for that delay.

IV. Conclusions of Law

On May 31, 2001, Respondents violated the following regulations at 4322 Bowen Road, S.E.: 22 DCMR 3804.1, 22 DCMR 3804.2, 22 DCMR 3804.3, 22 DCMR 3807.2(c), 22 DCMR 3815.1, 22 DCMR 3815.3, 22 DCMR 3815.4, 22 DCMR 3814.2, 22 DCMR 3819.4, and 22 DCMR 3836.4. The appropriate fine for each violation is specified in 16 DCMR 3241. A \$500 fine is authorized for the violation of § 3836.4;¹ fines of \$100 are authorized for the violations of §§ 3804.1, 3804.2, 3804.3, 3807.2, 3814.2 and 3819.4;² and fines of \$50 are authorized for the violations of §§ 3815.1 and 3815.4.³ Because the Civil Fine Schedule does not prescribe a fine for violating § 3815.3, no fine can be imposed for Respondents' violation of that provision.⁴ The total fine authorized for Respondents' violations, therefore, is \$1,200.

Although Respondents expected the inspector to allow them an opportunity to correct any violations before seeking imposition of fines, there is no legal requirement that an inspector do so. *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 204 (D.C. 1995). While Respondents abated the violations promptly, they have not provided any assurances that the violations will not be repeated. Indeed, they expect (and have expected) that they can commit violations with relative impunity, as long as they correct any violations after an inspector discovers them. Encouraging that attitude by suspending or reducing the fines in this case would create a perverse incentive for Respondents to commit additional violations, since

¹ See 16 DCMR 3241.2(t).

² See 16 DCMR 3241.3(kk), (nn), (rr) and (bbb).

³ See 16 DCMR 3241.4(g), (h)

⁴ The Civil Fine Schedule classifies violations of "22 DCMR 3815.2 or 3815.4 to 3815.8" as Class 4 violations, subject to a \$50 fine for a first offense. 16 DCMR 3241.4(h).

they will experience no adverse consequences from their violations. The regulations at issue here are important safeguards for the health, safety and comfort of the residents entrusted to Respondents' care. Respondents must understand that they need to adhere to the regulations at all times, and that they must correct violations promptly without waiting for an inspector's visit. Consequently, there will be no reduction in the fines for any of the violations.

The Civil Infractions Act, D.C. Code §§ 6-2712(f), now codified as D.C. Code § 2-1802.02(f) (2001 ed.), requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to file a timely answer. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Code §§ 6-2704(a)(2)(A), 6-2712(f), now codified as D.C. Code §§ 2-1801.04(a)(2)(A), 2-1802.02(f) (2001 ed.). Respondents have met their burden of establishing good cause for the late filing of their response. They followed the instructions on the Notice of Infraction and delivered their response to the Infractions Clerk Window operated by the Bureau of Vital Records. The ensuing delay in sending the response to the Clerk's office is not their fault. The late filing penalty assessed against Respondents, therefore, will be vacated. *DOH v. Smith*, OAH No. 00-40049 at 9 (Final Order, August 31, 2001).

V. Order

Based upon the foregoing findings of fact and conclusions of law it is, this _____ day of _____, 2001:

ORDERED, that the \$1,250 penalty imposed by this administrative court's order of July 20, 2001 is **VACATED**; and it is further

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Code §§ 6-2714 and 6-2715, now codified as D.C. Code §§ 2-1802.04 and 2-1802.05 (2001 ed.); and it is further

ORDERED, that if the Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to section 203(i)(1) of the Civil Infractions Act, D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001, now codified as D.C. Code § 2-1802.03(i)(1) (2001 ed.) ; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), now codified as D.C. Code § 2-1802.03(f) (2001 ed.), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Code § 6-2713(i), now codified as D.C. Code §

2-1802.03(i) (2001 ed.) and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(7), now codified as D.C. Code § 6-1801.03(b)(7) (2001 ed.).

/s/ 10/31/01

John P. Dean
Administrative Judge